

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C. DELORES TUCKER and	:	CIVIL ACTION
WILLIAM TUCKER,	:	
Plaintiffs,	:	
	:	NO. 97-6150
v.	:	
	:	
RICHARD FISCHBEIN, TIME WARNER	:	
INC., BELINDA LUSCOMBE,	:	
NEWSWEEK MAGAZINE, and	:	
JOHNNIE L. ROBERTS,	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J.

February 18, 1998

While defendants urge the court to find that their statements did not grievously fracture plaintiffs' standing in the community, such a ruling at this stage would be premature. Moreover, moving defendants may not hide behind the fair reporting privilege. Although newspapers and magazines possess a qualified privilege to make fair and accurate reports of judicial proceedings, including pleadings, this qualified privilege can be lost by abuse, such as over embellishment. Binder v. Triangle Publications, Inc., 275 A.2d 53 (Pa. 1971); First Lehigh Bank v. Cowen, 700 A.2d 498 (Pa. Super. 1997). The question is whether a reasonable person, comparing the complaint and the article as a whole, could conclude that the article as a whole was a fair and accurate rendition of the complaint. Id. at 502. If the reader

could conclude that the article carries with it a materially greater "sting" than the fair reporting privilege has been abused and is thus forfeited. Mosely v. Observer Pub. Co., 629 A.2d 965, 969 (Pa. Super. 1993). On a motion to dismiss we accept as true plaintiffs' allegations that all defendants were informed that plaintiffs' consortium claim specifically excluded a claim for loss of sex life. (Complaint at ¶¶ 14-17, 21). In light of this, moving defendants' descriptions that "[C. Delores Tucker] can no longer have sex with her husband" and "[C. DeLores Tucker] and her husband have no longer been able to have sex" are neither fair nor accurate and carry the requisite "sting" to preclude use of the fair reporting privilege. (Complaint at ¶¶ 19, 22).

An order follows.

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O R D E R

AND NOW, this 18th day of February 1998, upon consideration of a 12(b)(6) motion to dismiss submitted by Defendants, Newsweek Magazine and Johnnie L. Roberts (collectively "Newsweek"), (Docket No. 4); Plaintiffs' answer thereto (Docket No. 7); and Newsweek's reply (Docket No. 8); a 12(b)(6) motion to dismiss submitted by Defendants, Time Warner Inc. and Belinda Luscombe (collectively "Time Warner"), (Docket No. 10); and Plaintiffs' answer thereto (Docket No 12) it is hereby ordered that Newsweek's motion is **DENIED** and Time Warner's motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.

